

U N I T E D S T A T E S O F A M E R I C A

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

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UNITED STATES OF AMERICA	:	
UNITED STATES COAST GUARD	:	DECISION OF THE
	:	
	:	COMMANDANT
vs.	:	
	:	ON APPEAL
MERCHANT MARINER'S DOCUMENT	:	
NO. 453-15-5488-D3	:	NO. 2569
Issued to:	:	
<u>Kerry Lee TAYLOR, Appellant</u>	:	

This appeal has been taken in accordance with 46 U.S.C.

7702 and 46 C.F.R. 5.701.

By order dated June 16th, 1993, an Administrative Law Judge (ALJ) of the United States Coast Guard at Houston, Texas, revoked Appellant's merchant mariner's document (MMD) upon finding proved a charge of misconduct. The charge was supported by a total of four specifications. The first three specifications alleged that Appellant, while serving as able seaman aboard the M/V THUNDER, under authority of his document, on or about November 6, 1992, failed to return to the vessel by the time ordered; was wrongfully absent from his duties without authority; and wrongfully failed to perform his duties. The fourth specification alleged that Appellant, while acting under the authority of his MMD, submitted a fraudulent application for a

supplemental MMD on or about June 4, 1992 by answering "No" to the question asking if he had been convicted for other than minor traffic offenses, when in fact he had three "DWI" convictions and 12 other assorted convictions. A hearing was held at Houston, Texas, on May 25, 1993. Appellant was present at the hearing and represented himself throughout the proceedings.

Although Appellant first answered "no contest" to the first three specifications, the ALJ entered answers of "deny" to them on behalf of the Appellant after inquiring into Appellant's understanding of his answers. As to the fourth specification, Appellant answered "no contest" and the ALJ found his answer provident. The Investigating Officer (IO) introduced eleven exhibits into the record as well as the testimony of one witness, the master of the M/V THUNDER. Appellant testified on his own behalf. The ALJ introduced eight exhibits of a procedural nature into the record.

At the end of the hearing, the ALJ rendered an oral decision in which he found that the charge and all specifications were proved. The ALJ's written decision and order were entered on June 16, 1993, and were served on Appellant the following day. Appellant gave verbal notice of his intention to appeal at the hearing, and then perfected his appeal by filing one letter on or about July 13, 1993, within the filing requirements of 46 C.F.R. 5.703. Consequently, this appeal is properly before me.

Appearance: Appellant pro se.

FINDINGS OF FACT

At all times relevant herein, Appellant was acting under the authority of his MMD.

On about June 4, 1992, Appellant submitted an "information sheet" as part of an application for a duplicate MMD to the Coast Guard Regional Examination Center at Houston, Texas. The information sheet included the question, "Have you been convicted by any court -- including military court -- for other than traffic violations, including DWI's or DUI's?"¹ To this question,

¹ The above question is phrased less clearly than it might be. However, there is nothing in the record to suggest that Appellant did not understand the question. Furthermore, even if he had not understood that DUI or DWI convictions were to be acknowledged, Appellant had twelve other convictions (burglary, petty larceny, public intoxication and others) that the question plainly embraced.

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Appellant responded "No." That answer was false in that Appellant had been convicted about 15 times, including 3 DWI (driving while intoxicated) offenses.

In November 1992, Appellant was serving as able seaman aboard the M/V THUNDER, O.N. 977014, a documented U.S. towing vessel of over 100 gross tons. The M/V THUNDER was at or near the port of Durban, South Africa. Before going ashore on leave, Appellant was ordered by the master to return to the vessel by 0300 on November 7, 1992. Appellant did not return to the vessel until November 8, 1992, causing him to miss his assigned watch of 1200 to 1800 on November 7. The master of the M/V THUNDER logged Appellant's behavior in the vessel's logbook.

BASES OF APPEAL

This appeal has been taken from the order imposed by the ALJ. Appellant's brief on appeal consists of a letter. Giving Appellant the benefit of the doubt as to his intentions, the substance of his appeal is, first, that his record of convictions is misleading, and, second, that the ALJ abused his discretion by imposing an order of revocation. Appellant urges that an order of suspension or probation would have been more appropriate.

OPINION

I

Appellant states in his letter that a quick review of his police record would indicate that he has "serious problems," but that

such is not the case at all. Inasmuch as Appellant appears pro se, I will give what consideration is legally possible to his statements. However, Appellant's statements cannot be considered as evidence. 46 C.F.R. 5.701. I shall consider them, therefore, as general argument in support of his case.

Appellant argues that his record of convictions paints a misleadingly negative picture against him. From his letter of appeal, it seems Appellant believes his MMD was revoked because of the apparent seriousness of his several convictions. That is not so. Rather, Appellant's MMD was revoked principally because he submitted a fraudulent application for a duplicate MMD. See Decision and Order at 15, 16. Furthermore, Appellant did not even contest the specification of fraudulent application at the hearing, and he explicitly acknowledged that the specification was proved by his plea. TR at 13-14.

The seriousness of the various offenses might have been a factor for the Officer in Charge, Marine Inspection (OCMI), at the Houston Regional Examination Center, to consider in deciding whether to issue a duplicate MMD to Appellant, had he submitted a truthful application. See 46 U.S.C. 7302(d). Instead, Appellant's misconduct arose from his denying the OCMI the opportunity to evaluate his character. The misconduct proven against Appellant centered on his violation of 18 U.S.C. 1001 by his fraudulent application for a duplicate MMD.

Appellant argues that the ALJ's order of revocation was too severe. I disagree.

The sanction imposed in these hearings is exclusively within the authority and discretion of the ALJ. Appeal Decisions 2427 (JEFFRIES), 2362 (ARNOLD). The ALJ's order will not be modified on appeal unless it is clearly excessive. Appeal Decision 2455 (Wardell) (Aff'd sub nom. Commandant v. Wardell, NTSB Order No. EM-149); Appeal Decision 2391 (STUMES). As I have repeatedly held, the ALJ is not bound by the table of average orders (46 C.F.R. 5.569). See WARDELL & ARNOLD, supra.

The table at 46 C.F.R. 5.569 does not specifically list misconduct in the form of fraudulent application. In this case, the Investigating Officer (IO) sought an order of revocation from the ALJ, and the ALJ decided to accept the IO's recommendation. Appellant urges that revocation is not warranted on the basis of Coast Guard regulations at 46 C.F.R. 5.61, Acts or offenses for which revocation . . . is sought. I disagree.

I note that in this case, the ALJ's order follows my previous decisions. In Appeal Decision 2205 (ROBLES), I said, ". . . if a fraud in the procurement of a license is found, revocation (not a suspension, or a suspension on probation) is the only appropriate disposition when a hearing under R.S. 4450 has been accorded."

Although ROBLES involved a fraudulently obtained license, and this case involves a MMD, the principle is the same. As I explained in Appeal Decision 2025 (ARMSTRONG), information concerning the criminal background of an applicant is a crucial factor for the Coast Guard in deciding whether to issue seaman's

papers because an applicant's character relates to the risk he may pose to the seafaring world. Consequently, the truth of information provided by applicants for licenses and documents is essential to the Coast Guard's ability to discharge its mission of protecting life and property at sea. Id. I therefore hold that fraud in the procurement of any license, certificate, or document is a clear threat to the safety of life or property. As such, the ALJ's revocation of the MMD was neither an abuse of his discretion nor inappropriate.

CONCLUSION

The findings and conclusions of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with applicable law and regulations. I find no legal error in the proceedings or the ALJ's findings, nor has Appellant shown any. As explained above, the order is not excessive.

ORDER

The findings and order of the Administrative Law Judge are
AFFIRMED.

/S/ Robert E. Kramek
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this
day of July 1995.

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